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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 ROBYN H.,

10 Plaintiff,

CASE NO. C18-0263-MAT

11 v.

ORDER RE: SOCIAL SECURITY
DISABILITY APPEAL

12 NANCY A. BERRYHILL, Deputy
Commissioner of Social Security for
Operations,

13 Defendant.

14
15 Plaintiff proceeds through counsel in her appeal of a final decision of the Commissioner of
16 the Social Security Administration (Commissioner). The Commissioner denied plaintiff's
17 applications for Supplemental Security Income (SSI) and Disability Insurance Benefits (DIB) after
18 a hearing before an Administrative Law Judge (ALJ). Having considered the ALJ's decision, the
19 administrative record (AR), and all memoranda, this matter is AFFIRMED.

20 **FACTS AND PROCEDURAL HISTORY**

21 Plaintiff was born on XXXX, 1956.¹ She graduated high school and previously worked as
22 a landscape gardener, stone setter, and painter artist. (AR 43, 68-69.)

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¹ Dates of birth must be redacted to the year. Fed. R. Civ. P. 5.2(a)(2) and LCR 5.2(a)(1).

1 Plaintiff protectively filed a DIB application in January 2014 and an SSI application in
2 February 2014, alleging disability beginning October 1, 2013. (AR 181-91.) The claim was denied
3 initially and on reconsideration.

4 On February 2, 2016, ALJ Mary Gallagher Dilley held a hearing, taking testimony from
5 plaintiff and a vocational expert (VE). (AR 35-74.) On September 16, 2016, ALJ Dilley issued a
6 decision finding plaintiff not disabled. (AR 20-29.)

7 Plaintiff timely appealed. The Appeals Council denied plaintiff's request for review on
8 December 21, 2017 (AR 1-6), making the ALJ's decision the final decision of the Commissioner.
9 Plaintiff appealed this final decision of the Commissioner to this Court.

10 **JURISDICTION**

11 The Court has jurisdiction to review the ALJ's decision pursuant to 42 U.S.C. § 405(g).

12 **DISCUSSION**

13 The Commissioner follows a five-step sequential evaluation process for determining
14 whether a claimant is disabled. *See* 20 C.F.R. §§ 404.1520, 416.920 (2000). At step one, it must
15 be determined whether the claimant is gainfully employed. The ALJ found plaintiff had not
16 engaged in substantial gainful activity since the alleged onset date. At step two, it must be
17 determined whether a claimant suffers from a severe impairment. The ALJ found plaintiff's status
18 post traumatic accident with spinal surgeries, vertigo, right shoulder² degenerative joint disease,
19 and left hand sensory loss severe. Step three asks whether a claimant's impairments meet or equal
20 a listed impairment. The ALJ found plaintiff's impairments did not meet or equal the criteria of a
21 listed impairment.

22 If a claimant's impairments do not meet or equal a listing, the Commissioner must assess
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² The parties agree to a scrivener's error in the identification of a severe left shoulder impairment.

1 residual functional capacity (RFC) and determine at step four whether the claimant has
2 demonstrated an inability to perform past relevant work. The ALJ found plaintiff able to perform
3 light work as defined in 20 C.F.R. § 404.1567(b), 416.967(b), within the following parameters:
4 lift and/or carry twenty pounds occasionally and ten pounds frequently; stand and/or walk and sit
5 six hours in an eight-hour workday; never climb ladders, ropes, or scaffolds; occasionally balance,
6 stoop, kneel, crouch, and crawl; and avoid concentrated exposure to vibration and hazards. With
7 that assessment, the ALJ found plaintiff able to perform her past relevant work as a painter-artist
8 and stone setter.

9 If a claimant demonstrates an inability to perform past relevant work, or has no past
10 relevant work, the burden shifts to the Commissioner to demonstrate at step five that the claimant
11 retains the capacity to make an adjustment to work that exists in significant levels in the national
12 economy. Finding plaintiff not disabled at step four, the ALJ did not proceed to step five.

13 This Court's review of the ALJ's decision is limited to whether the decision is in
14 accordance with the law and the findings supported by substantial evidence in the record as a
15 whole. *See Penny v. Sullivan*, 2 F.3d 953, 956 (9th Cir. 1993). *Accord Marsh v. Colvin*, 792 F.3d
16 1170, 1172 (9th Cir. 2015) ("We will set aside a denial of benefits only if the denial is unsupported
17 by substantial evidence in the administrative record or is based on legal error.") Substantial
18 evidence means more than a scintilla, but less than a preponderance; it means such relevant
19 evidence as a reasonable mind might accept as adequate to support a conclusion. *Magallanes v.*
20 *Bowen*, 881 F.2d 747, 750 (9th Cir. 1989). If there is more than one rational interpretation, one of
21 which supports the ALJ's decision, the Court must uphold that decision. *Thomas v. Barnhart*, 278
22 F.3d 947, 954 (9th Cir. 2002).

23 Plaintiff avers error in the absence of right shoulder or left hand limitations in the RFC,

1 and in the assessment of medical opinion evidence. She requests remand for an award of benefits
2 or, alternatively, for further administrative proceedings. The Commissioner argues the ALJ's
3 decision has the support of substantial evidence and should be affirmed.

4 Medical Opinions

5 Plaintiff argues the ALJ erred in considering opinions from treating physician Dr. Robert
6 Wilson and nurse practitioner Catherine Doherty. She also addresses the medical opinion of
7 consultative examining physician Dr. Gary Gaffield.

8 The Social Security regulations applicable to plaintiff's claim distinguish between
9 "acceptable medical sources" and "other sources." Acceptable medical sources include, for
10 example, licensed physicians and psychologists, while other non-specified medical providers,
11 including nurse practitioners, are considered "other sources." 20 C.F.R. §§ 416.902, 416.913, and
12 Social Security Ruling (SSR) 06-03p (rescinded effective March 27, 2017).³

13 In general, more weight should be given to the opinion of a treating physician than to a
14 non-treating physician, and more weight to the opinion of an examining physician than to a non-
15 examining physician. *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1996). An ALJ must provide
16 clear and convincing reasons for rejecting the opinion of a physician where it is not contradicted
17 by another physician, or specific and legitimate reasons, supported by substantial evidence, for
18 rejecting a physician's contradicted opinion. *Id.* at 830-31. The ALJ may assign less weight to
19 the opinions of other sources, *Gomez v. Chater*, 74 F.3d 967, 970 (9th Cir. 1996), and may discount
20 their opinions by providing reasons germane to the source, *Molina v. Astrue*, 674 F.3d 1104, 1111
21

22 ³ New regulations, applicable to claims filed after March 27, 2017, include advanced practice
23 registered nurses, audiologists, and physician assistants as "acceptable medical sources," and recognize
other licensed health care workers as "medical sources" and other sources of evidence as "nonmedical
sources." 20 C.F.R. § 416.902(a), (d), (e).

1 (9th Cir. 2012).

2 Doherty completed a physical medical source statement in February 2014. (AR 312-14.)
3 She opined plaintiff required use of a cane or other assistive device when engaging in occasional
4 standing/walking; could stand/walk and sit up to two hours in a day, with the need to shift positions
5 at will; could frequently lift less than ten pounds and never more weight; could frequently twist,
6 occasionally crouch/squat, rarely stoop/bend or climb stairs, and never climb ladders; and had
7 significant limitations in reaching, handling, and fingering. (AR 312-13.) Plaintiff frequently
8 experienced pain or other symptoms severe enough to interfere with the attention and
9 concentration needed to perform even simple work tasks, could not perform even “low stress”
10 jobs, and would miss more than four days of work per month. (AR 314.) Dr. Wilson signed the
11 February 2014 opinion. (*See id.* and AR 329.)

12 Dr. Wilson completed and signed a second physical medical source statement in May 2015.
13 (AR 327-29.) He identified symptoms of vertigo, chronic pain in face, head, teeth, shoulders,
14 hands, and chest, and clinical findings and objective signs of numbness in right arm/hand and
15 around hips, unstable gait, and decreased back extension. (AR 327.) Dr. Wilson opined plaintiff
16 could stand/walk and sit up to two hours in an eight-hour workday, with the need to shift between
17 positions at will; could rarely lift up to ten pounds and never lift twenty pounds or more; could
18 rarely twist, stoop/bend, crouch/squat, or climb ladders or stairs; and had significant limitations
19 with reaching, handling, or fingering because her fingers become numb. (AR 328.) Plaintiff had
20 anxiety, her pain or other symptoms would frequently interfere with the attention and
21 concentration needed to perform even simple work tasks, was incapable of even “low stress” jobs,
22 and would miss more than four days of work per month. (AR 329.)

23 The record also includes a February 2014 report from chiropractor James Bentz. Bentz

1 stated testing showed, *inter alia*, “inflammation due to lack of control of normal cellular signaling
2 in both shoulders, right hip, left elbow and right wrist[,]” and “DNA damage in the cells of the
3 liver.” (AR 331.)

4 Dr. Gaffield provided the only other medical opinion in the record.⁴ In May 2016, he
5 opined plaintiff could lift no more than fifty pounds occasionally and twenty-five pounds
6 frequently; had no limitation in standing, walking, or sitting with normal breaks, and required no
7 assistive device; could occasionally perform postural activities; should avoid climbing,
8 scaffolding, traversing irregular surfaces, working at heights, and operating heavy equipment; and
9 had no manipulative restrictions. (AR 28, 389-90.)

10 Plaintiff asserts Dr. Wilson co-authored the February 2014 opinion with Doherty. She
11 argues the ALJ erred in failing to provide clear and convincing reasons for rejecting the February
12 2014 and May 2015 treating source opinions or to consider necessary factors pursuant to 20 C.F.R.
13 §§ 404.1527(c), 416.927(c). She maintains that, in rejecting both the treating source opinions and
14 the opinion of Dr. Gaffield, the ALJ impermissibly relied on her own lay analysis of the raw
15 medical data to formulate the RFC and deny benefits.

16 The ALJ found plaintiff more limited than assessed by Dr. Gaffield, giving partial weight
17 to his opinion corresponding to medium work, but limiting plaintiff to light work with
18 consideration of the overall medical evidence of record. (AR 29.) Dr. Gaffield’s opinion
19 contradicted the opinions of Dr. Wilson and Dougherty, and necessitated the provision of specific
20 and legitimate reasons for rejecting opinion evidence from Dr. Wilson.

21 The Commissioner argues that, even if Dr. Wilson can be said to have co-authored the
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23 ⁴ Non-examining State agency medical and psychological consultants found insufficient evidence
to evaluate the claim in May and October 2014. (AR 89-91, 96-98, 105-06, 114-15.) The ALJ noted they
did not have the benefit of subsequent medical records. (AR 29.)

1 February 2014 report completed by Dougherty, the ALJ provided sufficient reasons for rejecting
2 both that opinion and Dr. Wilson's May 2015 opinion. The Commissioner also notes that the ALJ
3 appeared to perceive the evidence from "Dr. Dougherty" (AR 27-28) to come from an acceptable
4 medical source. The Court, for the reasons set forth below, finds no error.

5 The ALJ gave little weight to the February 2014 opinion completed by Dougherty and
6 signed by Dr. Wilson, finding it "not completely consistent with the record." (AR 27-28.) A
7 corresponding emergency room examination and objective images showed only mild findings (AR
8 305-08, 324) and physical examinations throughout the record showed mostly full strength and
9 normal gait. (AR 28.) Plaintiff's reported activities of typically gardening most of the day,
10 including pulling weeds, raking, and hoeing, were inconsistent with the assessed limitations.

11 The ALJ also gave little weight to Dr. Wilson's May 2015 opinion, finding it inconsistent
12 with his treatment notes and the overall medical evidence of record. (*Id.*) While noting he had
13 been treating plaintiff for three years, Dr. Wilson indicated the earliest date of her symptoms and
14 limitations was in 1997, when she was run over and crushed by a tractor. (*Id.*; AR 329.) The
15 lifting limitations assessed and referenced unstable gait were inconsistent with Dr. Wilson's July
16 2015 examination, which showed full strength and normal gait. (AR 340.) His opinion was also
17 inconsistent with the recent consultative examination findings of Dr. Gaffield. (AR 27-29, 377-
18 90.) Dr. Gaffield found generally mild findings on examination, 4/5 strength of the right shoulder,
19 but otherwise 5/5 strength of the upper and lower extremities, and a normal gait. (AR 29, 385,
20 387-89.) Finally, Dr. Wilson's assessed postural and manipulative limitations were inconsistent
21 with plaintiff's report of regularly spending long hours working in her garden, including pulling
22 weeds, raking, and hoeing.

23 An ALJ may reject a physician's opinion upon finding it inconsistent with the medical

1 evidence, *Tommasetti v. Astrue*, 533 F.3d 1035, 1041 (9th Cir. 2008), the physician’s own notes
2 or observations, *Bayliss v. Barnhart*, 427 F.3d 1211, 1216 (9th Cir. 2005), and/or with the report
3 of another physician, *Morgan v. Commissioner of the SSA*, 169 F.3d 595, 603 (9th Cir. 1999). *See*
4 *also* 20 C.F.R. §§ 404.1567(c)(4), 416.927(c)(4) (“Generally, the more consistent a medical
5 opinion is with the record as a whole, the more weight [the ALJ] will give to that medical
6 opinion.”) An ALJ may also reject a physician’s opinion upon finding it inconsistent with a
7 claimant’s level of activity. *Rollins v. Massanari*, 261 F.3d 853, 856 (9th Cir. 2001).

8 “[T]he ALJ is responsible for determining credibility, resolving conflicts in medical
9 testimony, and for resolving ambiguities.” *Reddick v. Chater*, 157 F.3d 715, 722 (9th Cir. 1998).
10 When evidence reasonably supports either confirming or reversing the ALJ’s decision, the Court
11 may not substitute its judgment for that of the ALJ. *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th
12 Cir. 1999). “Where the evidence is susceptible to more than one rational interpretation, it is the
13 ALJ’s conclusion that must be upheld.” *Morgan*, 169 F.3d at 599.

14 Plaintiff rejects the finding of internal inconsistency with Dr. Wilson’s own treatment
15 notes, stating physicians do not typically include functional assessments of work-related
16 limitations in office notes. She notes the allegedly inconsistent July 2015 treatment note came
17 after the May 2015 opinion, related to injuries sustained in a July 2015 motor vehicle accident,
18 and indicated plaintiff was “very tender” to palpation on the chest wall and upper back area. (AR
19 344.) Plaintiff argues the opinions of Dr. Wilson and Dougherty find support in the “underlying,
20 albeit short record.” (Dkt. 14 at 14-16 (describing medical records).) She denies any indication
21 she gardens eight hours a day, five days a week, and notes her report to Dr. Gaffield she is
22 uncomfortable sitting for more than thirty minutes and was quite uncomfortable during the
23 examination. (AR 384-85.) Plaintiff points to her testimony of pain with sitting and difficulty

1 getting dressed six out of seven days a week due to hip pain, as well as her need to lie down about
2 four times a day due to vertigo. (AR 55, 58.)

3 The ALJ, in considering both the February 2014 and May 2015 medical opinions from
4 Dougherty and Dr. Wilson, rationally found inconsistency with the medical record as a whole and
5 internal inconsistency with Dr. Wilson's own treatment notes. The record shows plaintiff
6 described moderate vertigo dizziness starting the day of a December 2012 emergency room visit,
7 and had normal examination findings, including normal range of motion of extremities and no
8 motor or sensory deficit. (AR 25, 293-94.) While endorsing numerous symptoms in January 2014,
9 plaintiff also reported she used only over-the-counter medication. (AR 26, 315-16.) A February
10 2014 emergency room visit revealed some tenderness, limited shoulder range of motion, and
11 diminished right hand grip, but normal range of motion of other extremities and no motor or
12 sensory deficit. (AR 26, 306.) A right shoulder x-ray revealed mild joint degenerative change and
13 was otherwise negative. (AR 324.) Plaintiff's next report of joint-related pain came over a year
14 later, in July 2015, to Dr. Wilson. (AR 26, 340-41.) Even then, two months after Dr. Wilson
15 assessed functional limitations falling below the sedentary level and only three weeks after a motor
16 vehicle accident, plaintiff endorsed only left arm pain and tingling in the chest area. While "very
17 tender" on chest wall and upper back area and tender on the left shoulder, she had a normal
18 neurovascular joint examination and grossly intact neurological examination, with normal
19 reflexes, sensation, and motor coordination, and normal gait and strength. (*Id.*)

20 The ALJ also properly relied on the contradictory findings and opinion from a consultative
21 examining physician and the activities plaintiff reported during that examination. For example,
22 Dr. Gaffield noted diminished sensation in three fingers of plaintiff's left hand, but also intact
23 dexterity, her ability to pick out nickels from quarters and pennies from dimes, no difficulty

1 completing paperwork or a questionnaire, some limited motion of both of her thumbs that did not
2 impair her grip, and “slight weakness of grip” on the left hand as compared to the right. (AR 388.)
3 (*See also* AR 26-27, 387-89 (describing other findings).) The report also included a detailed
4 description of activities contradictory to the functional limitations assessed by Dougherty and Dr.
5 Wilson:

6 She states that she spends almost all of her waking day outside
7 working in her garden, but sometimes the neighbors have to tell her
8 to go in the house when it is dark. She is kneeling, crouching,
9 pulling weeds, raking, hoeing, watering her plants and states that
 this is what she lives off of. She is currently not relying on
 medication for her condition. She states that just getting out with
 nature tends to be the most effective treatment for her conditions.

10 (AR 385.) With respect to her hands, plaintiff complained of “some numbness, more in the left
11 hand than the right[,]” but that the “the most therapeutic [thing] for her to do is to be out in her
12 garden, picking, pulling weeds, and digging[,]” which “seems to make her hands feel better.” (*Id.*)
13 Her daily activities included, *inter alia*, preparing food, reading, watching television, working on
14 her computer, maintaining her home, doing yard work, and gardening:

15 Gardening is her hobby, her lifeline. . . . On a typical day she is up
16 at 6:00, has tea, will sit around have something light to eat. She will
17 go for a walk. She then heads outside to her garden. She spends all
18 day long in the garden. She may go in for a snack at lunch. She
 goes back out to the garden and stays in the garden until dark and
 comes in and goes to bed.

19 (AR 385-86.)

20 Contrary to plaintiff’s assertion, the ALJ did not fail to consider Dr. Wilson’s status as a
21 treating physician. She described Dr. Wilson as plaintiff’s treating physician. (AR 28.) Her
22 decision also reflects consideration of factors pertinent to that status, including the length of the
23 treating relationship and consistency with the record. *See* 20 C.F.R. §§ 404.1527(c), 416.927(c).

1 Nor does plaintiff demonstrate any other error in the ALJ's consideration of the medical
2 evidence. She points, for example, to the report from Bentz as clearly supporting the opinions of
3 Dr. Wilson. The ALJ stated no lab tests were performed, noted Bentz is not an acceptable medical
4 source, and found no acceptable medical source in the record supported his findings. (AR 28.)
5 Plaintiff contends the ALJ presumably meant to say the record did not contain any of the test
6 results from Bentz, not that he did not conduct any tests. However, while offering an alternative
7 interpretation, the ALJ's interpretation of this and the other medical evidence of record is at least
8 equally rational. It should also be noted that, while the ALJ depicted the evidence from Bentz as
9 an opinion (AR 28), his report did not assign any specific functional limitations. *See Turner v.*
10 *Comm'r of Social Sec. Admin.*, 613 F.3d 1217, 1223 (9th Cir. 2010) (ALJ not required to provide
11 reasons to reject physician's statement when statement did not assess any specific limitations or
12 opinions in relation to an ability to work).

13 In addition, although included within plaintiff's RFC-related assignment of error, plaintiff
14 notes that even Dr. Gaffield found plaintiff capable of only occasional overhead reaching with the
15 right hand due to mild limited range of motion of the right shoulder. (Dkt. 16 at 5; AR 379.)
16 However, as the Commissioner observes, Dr. Gaffield identified this limitation in a form medical
17 source statement. (AR 377-82.) He did not include the limitation in the narrative form following
18 the medical source statement, and, instead, therein opined plaintiff had no restrictions on
19 manipulative activities. (AR 390.) The ALJ reasonably considered the narrative form diagnosis
20 of mild weakness of the right shoulder with slight restricted motion and assessment of no
21 manipulative limitations. (AR 28, 389-90.) *See generally Murray v. Heckler*, 722 F.2d 499, 501
22 (9th Cir. 1983) (expressing preference for individualized medical opinions over check-off reports).

23 The ALJ, in sum, provided sufficient reasons for rejecting the opinions of Dougherty and

1 Dr. Wilson. Her reasons in relation to those opinions and the other medical evidence of record
2 have the support of substantial evidence.

3 RFC

4 Plaintiff avers error in the failure to assess RFC limitations related to her left shoulder
5 degenerative joint disease or her left hand sensory loss, both of which the ALJ found severe at step
6 two. *Valentine v. Commissioner SSA*, 574 F.3d 685, 690 (9th Cir. 2009) (“[A]n RFC that fails to
7 take into account a claimant’s limitations is defective.”). She describes the origin of her injuries
8 in a 1997 tractor accident and the medical evidence associated with her impairments, notes she is
9 right hand dominant, and identifies error based on the ALJ’s own finding of severe shoulder and
10 hand impairments. That is, by finding her shoulder and hand impairments severe, the ALJ
11 necessarily found these conditions resulted in work-related limitations.

12 Plaintiff avers harm given that the painter-artist and stone setter jobs identified at step four
13 require, respectively, constant reaching, handling, and fingering, and constant reaching and
14 handling and occasional fingering, and are thereby precluded by even a minimal limitation in one
15 of these activities. *See* Dictionary of Occupational Titles (DOT) 144.061-010 (painter-artist) and
16 700.381-054 (stone setter). Further, if plaintiff is unable to perform her past relevant work, the
17 Medical-Vocational Guidelines direct a finding of disability in light of her age, education, and
18 absence of transferable work skills. (AR 70-71); 20 C.F.R. Pt. 404, Subpt. P, App. 2, 202.06.

19 The Court finds no error. A step two severity finding does not necessarily imply an
20 impairment will be found to result in functional limitations sufficiently significant to affect the
21 ability of a claimant to perform work activities. *See, e.g., Buck v. Berryhill*, 869 F.3d 1040, 1048-
22 49 (9th Cir. 2017) (finding claimant misunderstood purpose of step two in arguing the finding of
23 several new severe impairments on remand necessitated alteration of the RFC); *Bray v. Comm’r*

1 of SSA, 554 F.3d 1219, 1228-29 (9th Cir. 2009) (“Bray offers no authority to support the
2 proposition that severe mental impairment must correspond to limitations on a claimant’s ability
3 to perform basic work activities.”); *Griffeth v. Comm’r of Soc. Sec.*, No. 06-1236, 2007 U.S. App.
4 LEXIS 3153 at *8-10 (6th Cir. Feb. 9, 2007) (“The ALJ’s finding that the limitation was more
5 than minimal [at step two]. . . was not inherently inconsistent with his finding that the limitation
6 has ‘little effect’ on the claimant’s ability to perform basic work-related activities.”); *Shandley v.*
7 *Astrue*, C11-0349-JLR, 2011 U.S. Dist. LEXIS 143491 at *6-8 (W.D. Wash. Oct. 5, 2011) (citing
8 other unpublished opinions finding same), *adopted by* 2011 U.S. Dist. LEXIS 136355 (Nov. 28,
9 2011). An understanding of this issue requires consideration of the differences between steps two
10 and four of the sequential evaluation process.

11 At step two, a claimant must make a threshold showing her medically determinable
12 impairments significantly limit her ability to perform basic work activities. *See Bowen v. Yuckert*,
13 482 U.S. 137, 145 (1987) and 20 C.F.R. §§ 404.1520(c), 416.920(c). “[T]he step two inquiry is a
14 *de minimis* screening device to dispose of groundless claims.” *Smolen v. Chater*, 80 F.3d 1273,
15 1290 (9th Cir. 1996) (citing *Bowen*, 482 U.S. at 153-54). Therefore, “[a]n impairment or
16 combination of impairments can be found ‘not severe’ only if the evidence establishes a slight
17 abnormality that has ‘no more than a minimal effect on an individual’s ability to work.’” *Id.*
18 (quoting SSR 85-28). Adjudicators must exercise “[g]reat care . . . in applying the not severe
19 impairment concept[,]” and, if “unable to determine clearly the effect of an impairment or
20 combination of impairments on the individual’s ability to do basic work activities,” should
21 continue the sequential evaluation process beyond step two. SSR 85-28.

22 An RFC assessment at step four, on the other hand, considers the most a claimant can do
23 considering her limitations or restrictions. 20 C.F.R. §§ 404.1545(a), 416.945(a); SSR 96-8p. In

1 other words, “the RFC is meant to describe the claimant’s residual abilities or what the claimant
2 can do, not what maladies a claimant suffers from – though the maladies will certainly inform the
3 ALJ’s conclusion about the claimant’s abilities.” *Howard v. Comm’r of Soc. Sec.*, 276 F.3d 235,
4 240 (6th Cir. 2002), *limited on other grounds as explained by Webb v. Comm’r of Soc. Sec.*, 368
5 F.3d 629, 631-33 (6th Cir. 2004). *See also Buck*, 869 F.3d at 1048-49 (“Step two is merely a
6 threshold determination meant to screen out weak claims. It is not meant to identify the
7 impairments that should be taken into account when determining the RFC.”) (internal citation
8 omitted). Indeed, the governing regulation recognizes that a claimant’s “impairment(s) and any
9 related symptoms . . . *may* cause physical and mental limitations that affect what you can do in a
10 work setting.” 20 C.F.R. §§ 404.1545(a), 416.945(a) (emphasis added).

11 At step four, the ALJ must identify a claimant’s functional limitations or restrictions, and
12 assess her work-related abilities on a function-by-function basis. *See* 20 C.F.R. §§ 404.1545,
13 416.945; SSR 96-8p. The ALJ must consider the limiting effects of all of plaintiff’s impairments,
14 including those that are not severe, in determining RFC. §§ 404.1545(e), 416.945(e); SSR 96-8p.
15 The ALJ need not include in the RFC assessment, or the corresponding hypothetical to the VE,
16 properly discounted opinion evidence or claimant testimony. *See Batson v. Comm’r of the SSA*,
17 359 F.3d 1190, 1197 (9th Cir. 2004).

18 Plaintiff does not demonstrate error in the RFC based solely on the fact the ALJ identified
19 severe shoulder and hand impairments at step two. The ALJ appropriately gave plaintiff the benefit
20 of the doubt at step two and went on to consider her work-related abilities in light of all of her
21 impairments at step four. *See, e.g., Griffeth*, 2007 U.S. App. LEXIS 3153 at *8-10 (this “expanded
22 review” works to a claimant’s “benefit, not to his detriment.”)

23 The ALJ also properly considered the medical opinions and other evidence associated with

1 plaintiff's shoulder and hand impairments at step four. As discussed above, the ALJ provided
2 specific and legitimate reasons for rejecting the assignment of any greater limitations in
3 functioning opined by treating providers. The ALJ also reasonably found plaintiff more limited
4 than assessed by Dr. Gaffield, while adopting some portions of this physician's opinion, including
5 the absence of any manipulative limitations. She also properly considered plaintiff's reporting of
6 activities inconsistent with manipulative limitations assessed by plaintiff's providers and attested
7 to in plaintiff's testimony. Further, and contrary to plaintiff's contention, the ALJ did assess
8 limitations relevant to plaintiff's shoulder and hand impairments by limiting her to lifting and/or
9 carrying up to twenty pounds occasionally and ten pounds frequently, and including various
10 postural and environmental limitations.

11 The Commissioner argues that, even if the ALJ erred in not including an overhead reaching
12 limitation on the right, as contained in the form completed by Dr. Gaffield, any error was harmless
13 considering both "common knowledge" and the DOT job descriptions. (Dkt. 17 at 11-12.)
14 Plaintiff rejects the Commissioner's lay analysis of overhead reaching in relation to her past
15 relevant work and maintains VE testimony would be required to resolve this issue. However,
16 finding no error in the RFC, the Court finds no need to address harmless error. Also, contrary to
17 plaintiff's suggestion, the Commissioner's argument does not reflect her waiver of error regarding
18 hand-related RFC limitations. The Commissioner, instead, provided a specific argument
19 associated with plaintiff's right arm based on evidence from Dr. Gaffield. For this reason, and for
20 the reasons stated above, the Court also finds substantial evidence support for the RFC assessment
21 and conclusion at step four.

22 ///

23 ///

CONCLUSION

For the reasons set forth above, this matter is AFFIRMED.

DATED this 12th day of October, 2018.

A handwritten signature in black ink, appearing to read "Mary Alice Theiler", written over a horizontal line.

Mary Alice Theiler
United States Magistrate Judge